IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2115 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT RAMJIBHAI PATNI

Versus

KALUBHAI LADHARBHAI JADAV

Appearance:

MR BM GUPTA for Petitioners

Ms. Unwala for Respondent No. 1

Mr. S.T. Mehta, A.P.P. for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/06/2000

ORAL JUDGEMENT

Rule. Learned Advocate Ms. Unwala waives service of rule on behalf of the respondent no.1. Learned A.P.P. Mr. S.T. Mehta waives service of rule

on behalf of the respondent no.2.

1. The petitioner has challenged the order dated 1-4-2000 passed by the learned J.M.F.C., Khambhatt in Criminal Case no.7/2000 whereby having recorded the verification of complainant, the learned Magistrate has directed P.I., Tarapur Police Station to investigate the matter under Sec.156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") and to report.

2. That the respondent no.1 Kalubhai Ladharabhai Jadav has filed Criminal Case no.7/2000 in the Court of learned J.M.F.C., Khambhatt on 1-4-2000 against the present petitioners alleging that the accused no.1(petitioner no.1) has kidnapped/abducted the accused no.2(petitioner no.2) on 24-3-2000 with intent to enter into illegal marriage or to compel her to have illicit sexual intercourse. It is also alleged that accused have stolen a golden ring worth Rs.2700/- and cash amount of Rs.4000/- from the safe of the complainant, and thereby, have committed offences punishable under Secs.366, 380 read with Sec.114 of the Indian Penal Code(" IPC" for short).

2.1 It may be noted that the petitioner no.2-Hemlataben is the daughter of the respondent no.1-Kalubhai Ladharabhai Jadav.

2.2 That the learned J.M.F.C., Khambhatt after recording the verification of complainant-Kalubhai Ladharabhai Jadav has passed the order directing P.I. Tarapur Police Station to investigate into the matter under Sec.156(3) of the Code and to report. The petitioners have challenged the said order in the present proceedings.

3. Learned Advocate Mr. B.M. Gupta appearing for the petitioners has urged two contentions:

(a) That the allegations made by the respondent no.1 against the petitioners in the impugned complaint-Criminal Case no.7/2000 are not only incorrect but mala fide and malacious, and thereby, the proceedings of the complaint are liable to be quashed.

(b) That the learned Magistrate while passing the impugned order has failed to consider that the offences alleged in the impugned

complaint being exclusively triable by the Court of Sessions, the order referring the investigation under Sec.156(3) of the Code is bad in law, inasmuch as the Magistrate ought to have conducted the inquiry under Sec.202(1)(a) of the "Code", and thereby also, the impugned complaint and the order passed thereon are liable to be quashed and set aside.

4. Elaborating the submission, learned Advocate Mr. B.M. Gupta has referred to Annexure "B"- a letter dated 17-4-2000 addressed by the petitioner no.2-Hemlataben to DSP, Anand and P.I. Tarapur Police Station wherein the petitioner no.2 has made allegation against the respondent no.1 (father of Hemlataben) and five others including one Bakulaben-the mother of petitioner no.2-Hemlataben in respect to causing torture and ill-treatment to the petitioner no.2-Hemlataben and attempting to put her on fire by pouring kerosene over her which are cognizable offences, and thereby, to record a criminal complaint against the respondent no.1 and said other five persons and to take appropriate steps.

4.1. Learned Advocate Shri Gupta has also referred to Annexure "C" a school leaving certificate of petitioner no.2-Hemlataben wherein her birthdate is shown to be as of 5-4-1979.

5. On the basis of the above stated facts, learned Advocate Shri Gupta has contended that on the date of alleged offence in the impugned complaint i.e.24-3-2000, the petitioner no.2-Hemlataben was major in age, and thereby, was eligible to enter into marriage with the person of her choice. It is submitted by Shri Gupta that the petitioner no.2 having cultivated friendship with the petitioner no.1- Chandrakant Ramji Patni, her parents the respondent no.1-Kalubhai (father) and Bakulaben(mother) were displeased and in order to deter the petitioner no.2-Hemlataben from continuing her relationship with the petitioner no.1-Chandrakant Ramjibhai Patni, ill-treated the petitioner no.2-Hemlataben and committed various offences as narrated by her in the letter addressed to DSP, Anand and P.I. Tarapur Police Station (as stated hereinabove). Not only that, the impugned complaint dated 1-4-2000 is also filed with ulterior motive to separate the petitioner no.2-Hemlataben from the petitioner no.1-Chandrakant Ramji Patni as parents of the petitioner no.2-Hemlataben desired to arrange the marriage of the petitioner no.2 with some other person.

That the respondent no.1 having resorted to legal proceedings against the petitioners by filing impugned complaint, with ulterior motive on the basis of false and got up allegations, the complaint is illegal and filing of the same amounts to abuse of the process of law, and thereby, deserves to be quashed and set aside.

6. That perusal of the impugned complaint, copy of which is produced at Annexure "A" discloses cognizable offences against the accused who are the present petitioners. It would be for the Investigating Officer to ascertain the truth whether any cognizable offence as alleged in the complaint has been committed or not. In view of the same, the contention having been based on facts, raises a question whether the evidence is legal or not? That while exercising the powers under Sec.482 of the "Code", the High Court ordinarily would not enquire whether the evidence is reliable or not, and would be reluctant to interfere with such investigation because it would then be impending investigation and jurisdiction of a statutory authority, to exercise powers under the "Code".(R.P. Kapoor vs. State of Punjab - AIR 1960 SC 866). Under the circumstances, the first contention urged on behalf of the petitioner cannot be accepted, and thereby, stands rejected.

7. Learned Advocate for the petitioner, Shri B.M. Gupta has referred to and relied on the provisions of Sec.202(1) of the "Code" in support of the second contention and has urged that proviso (a) of Sec.202(1) create embargo on the powers of a Magistrate to send the complaint for investigation to P.I. of the concerned Police Station if the offence complained of are triable exclusively by the Court of Sessions. It is further submitted that offences alleged in the impugned complaint are exclusively triable by the Court of Sessions and in view of the provisions of Sec.202(1) proviso (a), the order passed by the learned J.M.F.C., dated 1-4-2000 sending the complaint to P.I. Tarapur Police Station for investigation is contrary to law, and thereby, deserves to be quashed and set aside. To support the said submission, learned Advocate Shri Gupta has referred to and relied on the observations made in the following authorities:

(i) ROSY AND ANOTHER VS.STATE OF KERALA AND ORS. reported in 2000 AIR SCW 156.

(ii) MAMMU VS. HARI MOHAN AND ANOTHER, reported in 2000 AIR SCW 172.

(iii) MOIDEENKUTTY HAJI AND OTHERS VS. KUNHIKOYA AND OTHERS, reported in AIR 1987, KERALA 184.

(iv) LAXMIBEN WIFE OF MAGAN PARSHOTTAM VS. MAGJIBHAI BIJIYABHAI AND ORS, reported in 23(2) G.L.R. 724.

(v) MAJHARALI ALIAJAGARALI SAIYED VS STATE AND ORS. reported in G.L.T. 237.

8. That the second submission urged on behalf of the petitioner is ex facie misconceived and based on erroneous premise , and thereby, could hardly be merited acceptance. The above stated authorities submitted in support of said contention have no application to the facts of the present case, and as such, are irrelevant.

9. It would be pertinent to note that powers conferred on the Magistrate under Sec.156(3) of the "Code" to send the complaint to any officer in charge of the Police Station for investigation of cognizable case and power under Sec.202(1) of the "Code" to direct an investigation of a complaint to be made by a Police Officer are different in nature and content and are exercisable in different situations. That the power under Sec.156(3) of the "Code" could be exercised before taking cognizance of the offence alleged in the complaint presented before the Court while the power under Sec.202(1) could be exercised after taking cognizance of the complaint made to the Magistrate. That proviso (a) of Sec.202(1) of the " Code" does not debar the Magistrate from sending the complaint to the Incharge of the Police Station for investigation under Sec.156(3) of the "Code" irrespective of the fact that offences alleged in the complaint are exclusively triable by the Court of Sessions or not.

10. The above-stated view is fortified by the observation made in the matter of DEVARAPALLI LAKSHIMINARAYANA REDDY AND ORS VS. V. NARAYANA REDDY AND ORS., AIR 1976 SC 1672, vide paragraphs 18 and 19. That the material and relevant observation from the said paragraphs excerpted hereinunder clarify the issue:

" The power to order police investigation under Section 156 (3) is different from the power to direct investigation conferred by Section 202. (1) The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of

a complaint regarding the commission of a cognizable offence, the power under Sec.156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1) (a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under subsection (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Sec.173. On the other hand Sec.202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct , within the limits circumscribed by that section an investigation " for the purpose of deciding "whether or not there is sufficient ground for proceeding" Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him. "

On the basis of the foregoing discussion, the petition fails and stands disposed of as rejected. Rule is discharged.

(A.K.Trivedi,J.)

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